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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,406	01/26/2001	Abbas Bagasrawala	1	6323

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EXAMINER

COLLINS, SCOTT M

ART UNIT PAPER NUMBER

2145

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/771,406	Applicant(s) BAGASRAWALA, ABBAS	
	Examiner Scott M. Collins	Art Unit 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-20 examined.
2. It is hereby acknowledged that the following papers have been received and placed of record in the file: Amendment on 10/08/2004.

Response to Arguments

3. Applicant's arguments filed 10/08/2004 have been fully considered but they are not persuasive.
4. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Specifically, applicant accuses each reference of not teaching limitations for which they were not relied. In regards to claims 5, 13, and 20, applicant points out that "IBM TDB does not disclose or suggest an IPESEC security association", but IBM TDB is not relied upon in regards to these claims.
5. In response to applicant's argument that IBM TDB is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Mamros' system teaches a simple method for calculating a weighted traffic flow per usage for a given network element, and TDB has disclosed a comparison mechanism for comparing a value of said weighted traffic flow per usage. Specifically, in regards to claims 3-5, 11-13, and 18-20, applicant argues that IBM TDB

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is wholly unrelated to the limitations of the claims. However, IBM TDB is not relied upon for these claims; the Mamros reference is used to reject these claims.

6. The Examiner disagrees with Applicant's assertion that the combination of the references is inappropriate. As discussed, the TDB reference teaches a more complex comparison mechanism for comparing a value of said weighted traffic flow per usage with a remainder value, whereas Mamros teaches a simple method for calculating a weighted traffic flow per usage for a given network element. The references are indeed in the same context, work together, and an appropriate combination.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mamros et al., U.S. Patent Number 6,360,269 B1 (herein referred to as Mamros) in view of "Heuristic Method for Grouping Based on Traffic Counts" by IBM TDB (herein referred to as TDB).

9. Referring to claim 1, Mamros has taught an apparatus for use in predicting exchanges of a specific quantity of communication traffic between network elements, said apparatus comprising a digital processor operable on a periodic basis to calculate a weighted traffic flow per usage for a given network element (Mamros figure 3, processor 303; figure 4, steps 407 and 409; and column 8, lines 35-59).

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10. Mamros has not expressly disclosed a comparison mechanism. TDB has disclosed a comparison mechanism for comparing a value of said weighted traffic flow per usage with a remainder value of said specific quantity of communications traffic yet to be processed by said network element, wherein an indication is given by said network element if said remainder value is less than said weighted traffic flow (TDB paragraph 3 where multiple traffic averages are calculated and compared and action is taken as a result of this comparison.). TDB has also taught calculating a weighted traffic flow per usage for a given network element (TDB paragraph 2). Mamros' system teaches a simple method for calculating a weighted traffic flow per usage for a given network element, but at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize the methods taught by TDB in Mamros' system. One of ordinary skill in the art would have been motivated to do this in order to gain advanced knowledge of the traffic flow of the system in relation to the remaining data to be processed and thereby alter the processing based on this advanced knowledge.

11. Referring to claim 2, Mamros has taught the apparatus wherein said digital processor waits until beginning another time period to calculate another value of said weighted traffic flow per usage to be compared with an updated remainder value (Mamros figure 4, steps 407 and 409; and column 8, lines 35-59).

12. Referring to claim 3, Mamros has taught the apparatus wherein said specific quantity of communications traffic corresponds to a quantity value associated with a security association (SA) between said network elements (Mamros column 1, line 63 – column 2, line 8; and column 8, lines 35-59).

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13. Referring to claim 4, Mamros has taught the apparatus wherein said indication given from said network elements prompts renegotiation of another SA (Mamros column 5, lines 63 – column 6, line 7; and column 9, lines 57-61).

14. Referring to claim 5, Mamros has taught the apparatus wherein said SA is an Internet Protocol Security (IPSEC) SA (Mamros column 1, line 63 – column 2, line 8).

15. Referring to claim 6, Mamros has taught the apparatus wherein said apparatus is used in connection with a communications traffic monitoring application to identify randomly occurring traffic patterns (Mamros figure 4, steps 407 and 409; and column 8, lines 35-59).

16. Referring to claim 7, Mamros has taught the apparatus wherein said apparatus is used in connection with a communications network management application to monitor usage of network components (Mamros figure 4, steps 407 and 409; and column 8, lines 35-59).

17. Referring to claim 8, Mamros has taught the apparatus wherein said weighted traffic flow per usage corresponds to the average use of network element per period multiplied by the average communications traffic quantity per use (Mamros figure 4, steps 407 and 409; and column 8, lines 35-59).

18. Claims 9-16 do not recite limitations above the claimed invention set forth in claims 1-8 and are therefore rejected for the same reasons set forth in the rejection of claims 1-8 above. Specifically, claims 9-16 simply teach the method for using the apparatus of claims 1-8.

19. Referring to claim 17, Mamros has taught the method wherein at least a portion of said communications traffic flows between network elements over the public Internet (Mamros figures 1-2).

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20. Claims 18-20 do not recite limitations above the claimed invention set forth in claims 1, 3, 8, and 5 and are therefore rejected for the same reasons set forth in the rejection of claims 1, 3, 8, and 5 above. Specifically, claims 18-20 simply teach the method for using the apparatus of claims 1, 3, 8, and 5.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Collins whose telephone number is 571.272.3934. The examiner can normally be reached on Mon.-Fri. 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 571.272.6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

smc
May 02, 2005


VALENCIA MARTIN-WALLACE
SUPERVISORY PATENT EXAMINER